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EXAMINER
BUI, VY Q

ART UNIT	PAPER NUMBER
3773	

MAIL DATE	DELIVERY MODE
02/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/864,389

Applicant(s)

RICHTER ET AL.

Examiner

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,8,11,26,28,31-47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) 31-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8,11,26,28,42-47 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

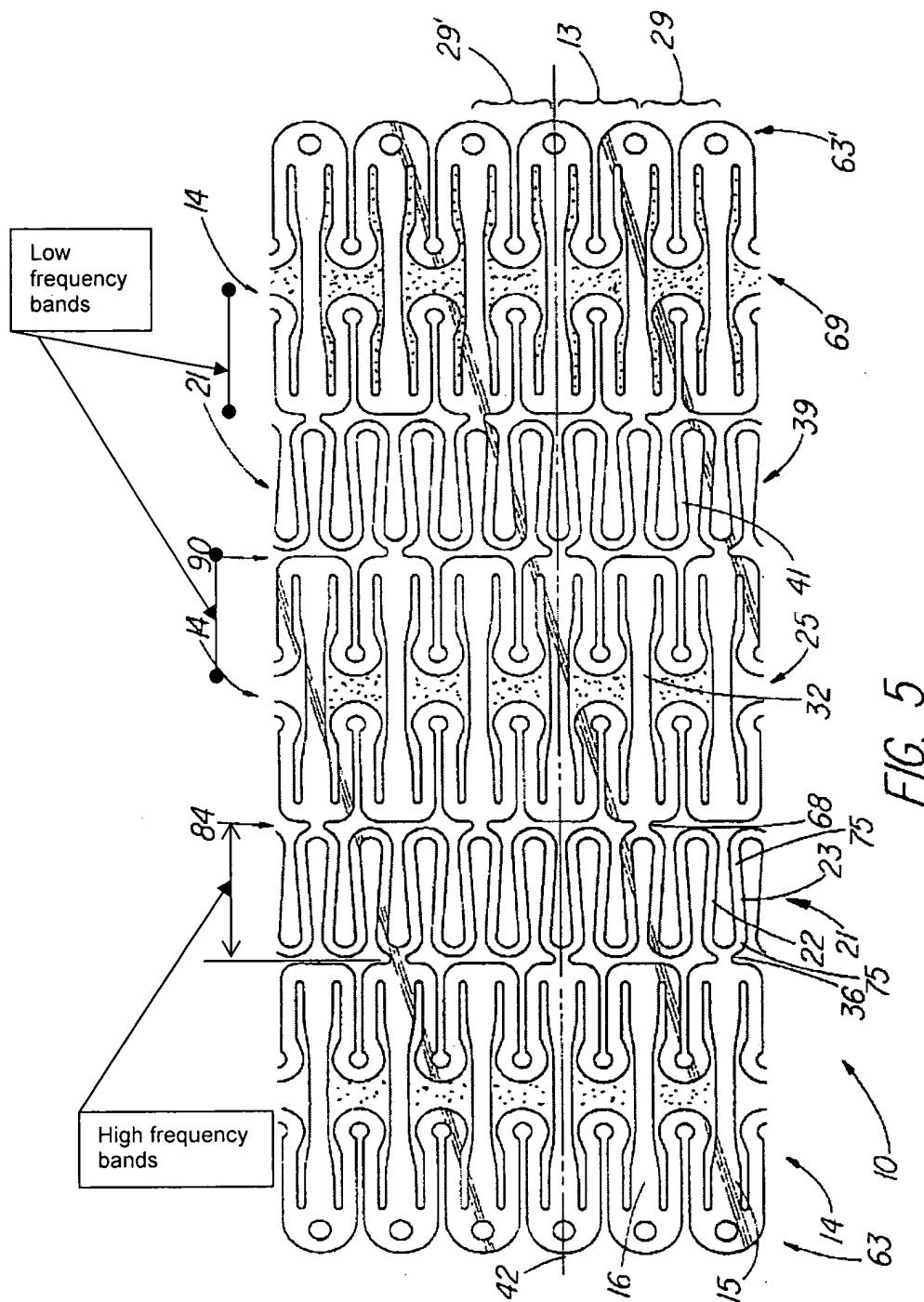
Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: definition of "sinusoidal" (1page) from www.merriamwebster.com.

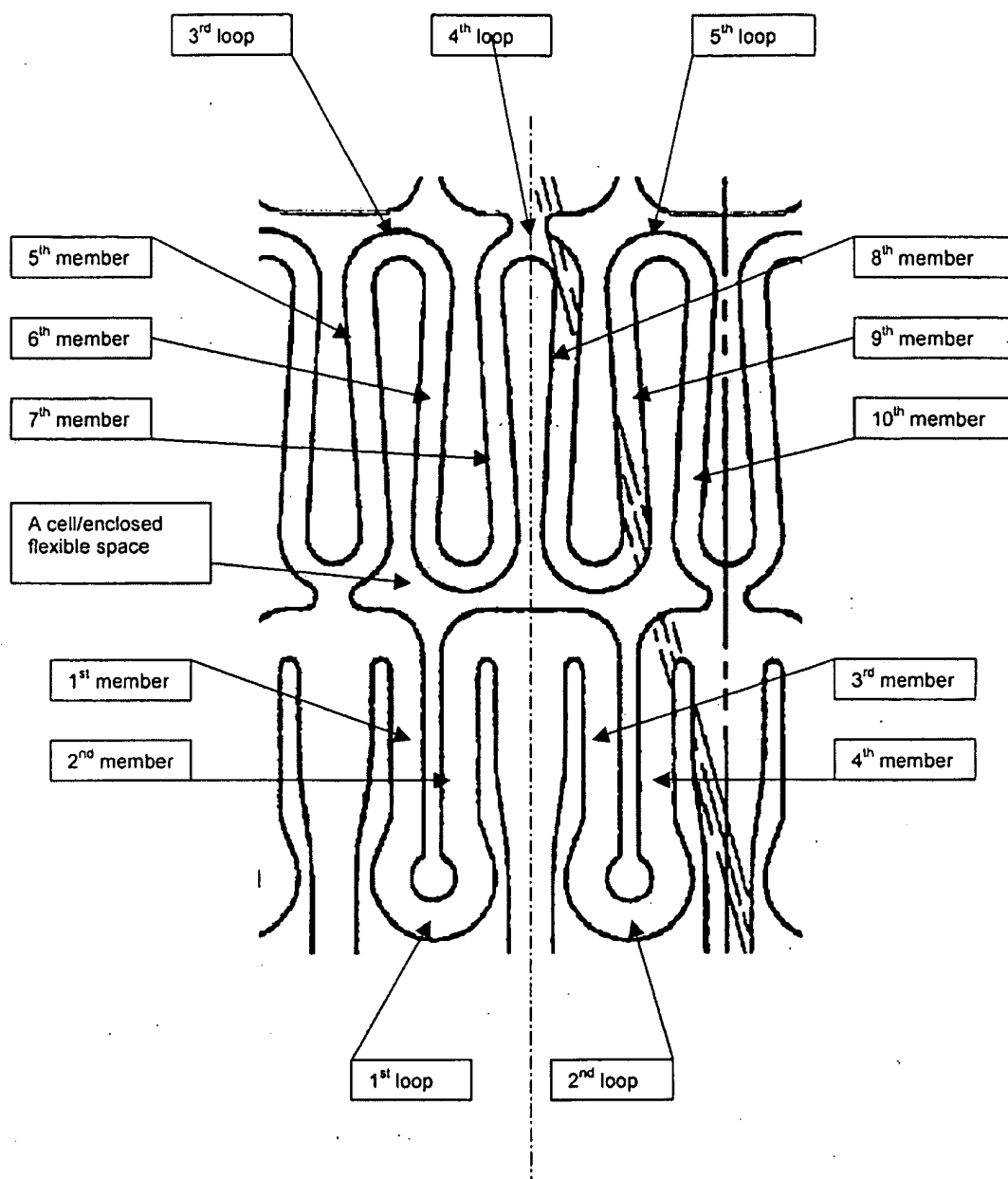
Art Unit: 3773

DETAILED ACTION

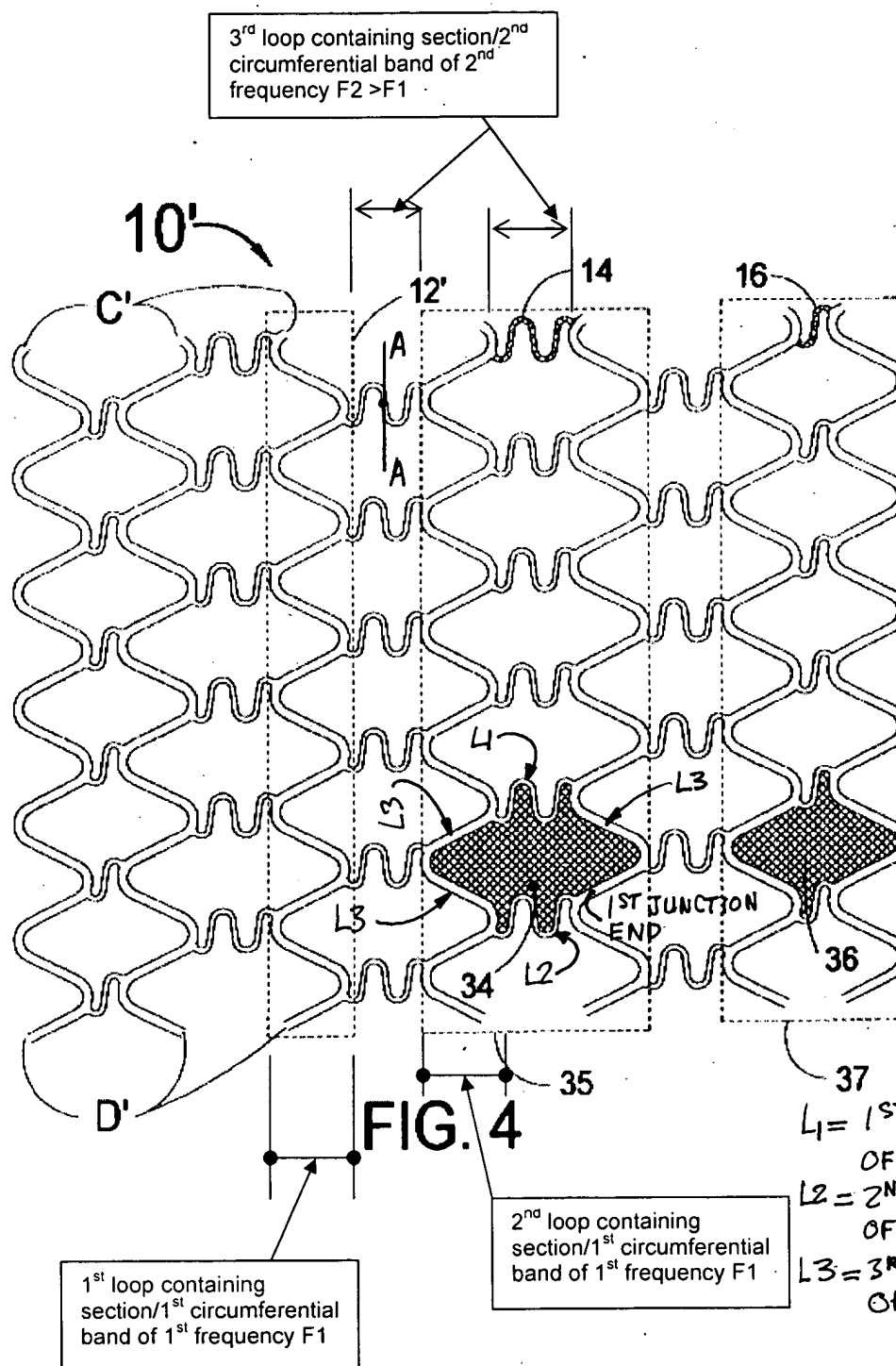


BERRY et al.-6,231,598

Art Unit: 3773



A cell in Fig. 5, BERRY et al.



Fischell-6,190,403

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1, 6, 11, 42-47 and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischell (6,190,403).

Please refer to Fischell'-403's Fig. 4 reproduced and shown in page 4 of this "Office Action".

1.1. As to claims 1, 6, 42-47 and 49, Fig. 4 shows 1st loop containing sections/1st circumferential bands of frequency F1, 2nd loop containing sections/1st circumferential bands of frequency F1, and elements 14 as 3rd loop containing sections/2nd circumferential bands of frequency F2 being higher than F1 ($F2 > F1$) extending in longitudinal, circumferential and radial directions of the stent 10' because they are 3-dimensional elements. Therefore, elements 14 indeed extend about a circumferential axis AA of stent 10' as recited in the claim.

Fig. 4 of Fischell'-403 clearly shows elements 14 having a width smaller than a width of 1st loop containing sections/1st circumferential bands of frequency F1 and 2nd loop containing sections/1st circumferential bands of frequency F1.

Art Unit: 3773

Further, Fig. 4 of Fischell-'403 clearly shows 1st loop containing sections of frequency F1 and 2nd loop containing sections of frequency F1 are out of phase 180 degrees.

1.2. As to claim 11, F. 4 of Fischell-'403 (see F. 4 reproduced above) show "triangular" cell 34 including elements 14 as 1st loop containing sections of frequency F1 and 2nd loop containing sections of frequency F1 define a 1st generally sinusoidal pattern, 3rd loop containing sections of frequency F2 ($F2 < F1$) defines a 2nd generally sinusoidal pattern and a first junction end (also an adjacent 3rd loop containing sections along the stent) as recited in the claim.

Notice that cell 34 can be considered as triangular because at least 3rd loop containing sections and first junction end have a triangular configuration.

Further, loops in one 3rd loop containing sections of 2nd sinusoidal pattern are 180-degree out of phase with the adjacent second sinusoidal pattern along the stent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 3, 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell (6,190,403) as applied to claims 1, 6 and 26 above, and further in view of YANG et al (6,120,847).

As to claims 3, 8 and 28, Fischell-'403 discloses substantially all limitations recited in the claims, except for the stent is coated with a medicine for treatment purpose. However, coating a stent with a medicine or drug is well known in the art. For example, YANG discloses a method for coating a therapeutic substance on the surface of the stent for local treatment of a blood vessel. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a medicine coating to Fischell-'403 stent so as to have the medicine distributed directly to the treatment site of a blood vessel.

Art Unit: 3773

2. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al.-6,231,598.

Berry-'598 discloses substantially all limitations recited in the claims, especially critical cells structured as recited in the body of the claim (see a portion of Berry-'598's Fig. 5 showing a cell reproduced on page 3 above) including wider members and narrower members of the cells, wherein the narrower elements are for flexibility and wider elements are for radial strength to support a blood vessel, except for Berry-'598 stent also includes other cells as indicated with dots in Fig. 5 (page 2 above). However, the cells as recited in the claim and as disclosed by Berry-'598 (as shown on page 4) are essential structures for the Berry-'598 stent as well as for the stent of the present invention. It would have been obvious to one of ordinary skill in the art to have other cell structures not important in combination with the cell structure as recited in the body of the claim, because the other cell structure is not as important as the structure recited in the body of the claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11, 26 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1:

- lines 14-18, the recitation "... each said third loop containing section **disposed** in the generally circumferential space between each of said first and second loop containing sections to form consecutive repeating patterns along the longitudinal axis of the stent for at least two repetitions and alternately **joined to said first, second and third loop containing sections forming a uniform pattern of flexible cells;**" does not make sense because the claim basically states that **said third loop** containing section joined to said first, second and

Art Unit: 3773

states that **said third loop** containing section joined to said first, second and **third loop** containing sections forming a uniform pattern of flexible cells.

Amendment of claim 1 is required.

- Line 3, "the circumferential direction" lacks antecedent basis.

Claim 11:

- line 4, "the circumferential direction" lacks antecedent basis.
- line 9, the recitation " ... **at on its other end**" is not proper because the phrase "at on" is not proper and the term "its" is not clearly defined. Amendment of the claim 11 is required.

Claim 26: line 42, it is not clear if the recitation " one of a uniform pattern of flexible cells" is the same as "a uniform pattern of flexible cells" in line 1-2 of claim 26. Amendment of the claim 49 is required.

Claim 28: line 1: claim 26 dependent on canceled claim 27. Amendment is required.

Claim 49: line 4, the recitation " ... **the circumferential direction**" lack antecedent basis. Amendment of the claim 49 is required.

Response to Amendment

Applicant's arguments filed 9/28/2007 have been fully considered but they are not persuasive.

Rejection 102(e) based on Fischell-6,190,403:

Arguments: the applicant argued (page 12, Remarks, paper 9/28/2007) that "As can be seen, this portion in Fischell is not formed of a single, continuous generally, sinusoidal pattern as required by the claims. Rather, this portion of the Fischell stent comprises a plurality of short

Art Unit: 3773

Response: element 14 as shown in Fig. 4 of Fischell-'403 is clearly qualified for the limitation "single, continuous, generally sinusoidal pattern" in the claims of the present invention. In general, a sinusoidal pattern only requires a pattern looks like a sine wave (see one page of attachment from www.merriamwebster.com).

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


02/01/2008
Vy Q. Bui
Primary Examiner
Art Unit 3773